

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WALID EL SHRAFI,
Plaintiff

v.

PORTER-CABLE/DELTA,
Defendant

CIVIL ACTION NO.

34681
10/24/01
01cv11833RCL

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS:

Now comes the Defendant, Porter-Cable/Delta ("Porter-Cable"), respectfully stating in support of this Notice of Removal as follows:

1. This action was commenced and is now pending in the Commonwealth of Massachusetts Superior Court Department of the Trial Court, Essex County, under the caption Walid El Shrafi v. Porter-Cable Corporation, and under Case No. CV2001-01171.
2. Defendant received service of process of a Summons and Complaint on or about October 4, 2001. True and correct copies of the Summons and Complaint served upon defendant are attached to this Notice as Exhibit A.
3. No other proceedings have transpired in this matter, and it is timely removed pursuant to 28 U.S. C. § 1446(b).
4. In his complaint, plaintiff alleges that he was severely injured when a nailer manufactured by the defendant misfired sending a nail into his wrist. He makes claims for his physical injuries and medical expenses.

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5. This Court has original jurisdiction over this matter pursuant to its diversity jurisdiction under 28 U.S.C. § 1332, for the following reasons:

- a. The allegations in the Complaint indicate that the amount in controversy in this dispute exceeds the \$75,000.00 jurisdictional requirement of 28 U.S.C. § 1332(a).
- b. Upon information and belief and as shown on Plaintiff's complaint, plaintiff is a resident of Peabody, Massachusetts.
- c. The defendant is a corporation incorporated under the laws of the State of Minnesota and having its principal place of business in the State of Tennessee.

6. Due to the fact that the plaintiff is a Massachusetts resident and that the defendant is neither incorporated nor has a principal place of business in Massachusetts, there is complete diversity among the parties. This case may thus be removed to this Court pursuant to 28 U.S.C. § 1441(a) based upon this Court's original jurisdiction over diversity of citizenship claims. 28 U.S.C. § 1332.

7. A true and correct copy of this Notice will be filed with the Clerk of the Commonwealth of Massachusetts Superior Court Department of the Trial Court, Essex County, as provided by law.

8. Written notice of the filing of this Notice will be given to the plaintiffs and to all other parties in this action as required by law.

WHEREFORE, Defendant Porter-Cable/Delta gives notice that this action now pending against it in the Commonwealth of Massachusetts Superior Court Department of the Trial Court, Essex County, be removed to this Court.

Dated October 23, 2001 and signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

PORTER-CABLE/DELTA
By its Attorneys,
SUGARMAN, ROGERS, BARSHAK & COHEN, P.C.

By: 

Michael S. Appel, BBO No. 343898
101 Merrimac Street
Boston, MA 02114-4737
Tel. (617) 227-3030

Dated: October 23, 2001

CERTIFICATE OF SERVICE

I, Michael S. Appel, hereby certify that on this date I served the within Notice of Removal by mailing a copy of same, first-class mail, postage prepaid to plaintiff's attorney:

Darin M. Colucci, Esquire
Colucci & Colucci, P.C.
552 Adams Street
Milton, MA 02186


Michael S. Appel

(TO PLAINTIFF'S ATTORNEY: Please Circle Type of Action Involved: - TORT - MOTOR VEHICLE TORT -
CONTRACT - EQUITABLE RELIEF - OTHER.)

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION

No. 1171



Walid El Shrafi

, Plaintiff(s)

v.

Porter Cable Corporation

Registered Agent: CT Corporations Systems

, Defendant(s)

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Darin M. Colucci / Seth I. Robinson,
plaintiff's attorney, whose address is COLUCCI & COLUCCI, 552 Adams Street, Milton, MA 02186, an answer to the
complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the
day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the
complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at
Salem either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may
have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's
claim or you will thereafter be barred from making such claim in any other action.

WITNESS, SUZANNE V. DeVECCHIO, Esquire, at Salem, the 2nd
day of October, in the year of our Lord two thousand one

Thomas H. Devecchio Jr.
Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

NOTICE TO DEFENDANT - You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
Civil Action No.: .

Walid El Shrafi,
Plaintiff

Vs.

Porter- Cable Corporation,
Defendant

COMPLAINT AND DEMAND FOR JURY TRIAL

THE PARTIES

1. The plaintiff, Walid El Shrafi, resides at 21 Harrison Avenue in Peabody, County of Essex, Commonwealth of Massachusetts.
2. The defendant, Porter-Cable Corporation is a Tennessee Corporation with a principal place of business of 4825 Highway 45 North, Jackson, Tennessee.

FACTS

3. On or about June 19, 1998, while in the exercise of due care, the plaintiff was operating a Porter-Cable finish nailer, know colloquially as a nail gun. Because of the negligent design of the aforementioned nail gun, plaintiff was caused to sustain severe injuries.
4. As a result of the injuries sustained by the plaintiff, Walid El Shrafi, he was caused to suffer great pain of body and anguish of mind, his earning capacity was and will be impaired, and he has incurred and will incur expenses for medical care and attendance.

**COLUCCI &
COLUCCI, P.C.**

552 Adams Street
n, Massachusetts 02186
ophone: (617) 698-6000
simile: (617) 698-1262

CAUSES OF ACTION

(The Causes of Action specifically incorporate by reference all of those paragraphs previously set forth)

FIRST CAUSE OF ACTION

5. This is an action by the plaintiff, Walid El Shrafi, against the defendant, Porter-Cable Corporation, for negligence resulting in personal injuries.

SECOND CAUSE OF ACTION

6. This is an action by the plaintiff, Walid El Shrafi, against the defendant, Porter-Cable Corporation, for breach of implied warranty of merchantability concerning the aforementioned Porter-Cable Corporation finish nailer, resulting in personal injuries.

DEMANDS FOR RELIEF

7. The plaintiff, Walid El Shrafi, demands judgment against the defendant, Porter-Cable Corporation, with interest and costs as to the first cause of action.

8. The plaintiff, Walid El Shrafi, demands judgment against the defendant, Porter-Cable Corporation, with interest and costs as to the second cause of action.

JURY CLAIM

The plaintiff demands a trial by jury.

Respectfully Submitted,

For The Plaintiff,

By His Attorney,

Darin M. Colucci, Esq.
COLUCCI & COLUCCI, P.C.
552 Adams Street
Milton, MA 02186
(617) 698-6000
BBO#563232

June 18, 2001

**COLUCCI &
COLUCCI, P.C.**

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